

INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC. (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Inquiries into deaths occurring in Scotland

Section 2 - Mandatory inquiries

19. **Section 2** sets out the circumstances in which an FAI is mandatory. Under subsection (3) an FAI is mandatory if a person died in Scotland as a result of an accident in Scotland, in the course of the person’s employment or occupation. This restates section 1(1)(a)(i) of the 1976 Act. The reference to employment covers work carried out by a worker as well as an employee and the term “occupation” is a broad term that will cover most work related situations as is the case under the 1976 Act. For example, the death of a constable of Police Scotland who dies in the course of their duties would trigger a mandatory FAI. The death as a result of an accident of a casual worker or a person with a zero hours contract would also be covered by the provision and not just those with a more standard contract of employment.
20. Under subsection (4) an FAI is mandatory if a person has died in Scotland and was in legal custody, or was a child required to be kept or detained in secure accommodation. A person being in legal custody or secure accommodation is defined by the status of that person regardless of the person’s physical location at the time of the death. Accordingly if a person dies in hospital who is at the time of death still serving a custodial sentence, an FAI must be carried out. The effect is the same as that in section 1(1)(a)(ii) and (4) of the 1976 Act.
21. Subsection (5) defines “legal custody”. This includes being imprisoned or detained in a penal institution, being in police custody, being held in custody on court premises or being detained in service custody premises. The definition of police custody takes its meaning from the Criminal Justice (Scotland) Act 2016. The reference to court custody includes the death of any person in the court cells or the court building, which may be separate from police custody or occur after the end of police custody. A death of a person required to be detained in premises used by the armed forces as service custody premises continues to be included as before.
22. The inclusion of a death of a child required to be kept or detained in secure accommodation is an addition to the mandatory categories in the 1976 Act. “Child” is defined in section 40 as a person who has not yet reached the age of 18 and secure accommodation takes its definition from regulations made under the Public Services Reform (Scotland) Act 2010¹, thus keeping pace with any change to the meaning of such accommodation which may occur from time to time.

¹ The relevant regulations are the Secure Accommodation (Scotland) Regulations 2013, as amended.

These notes relate to the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2) which received Royal Assent on 14 January 2016

23. By providing that an FAI is to be held in these circumstances, the effect of this section is to require the procurator fiscal to investigate the circumstances of the death and arrange for a FAI to be held.
24. It is expected that a further category of mandatory FAI will be provided in an Order under section 104 of the Scotland Act 1998, namely deaths of service personnel in the course of military service in Scotland. Deaths of service personnel abroad are within section 7 of the 2016 Act.